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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 310

JOHN LEN LACY,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT,

And

BRIEF IN SUPPORT THEREOF.

FRANK J. LOONEY,
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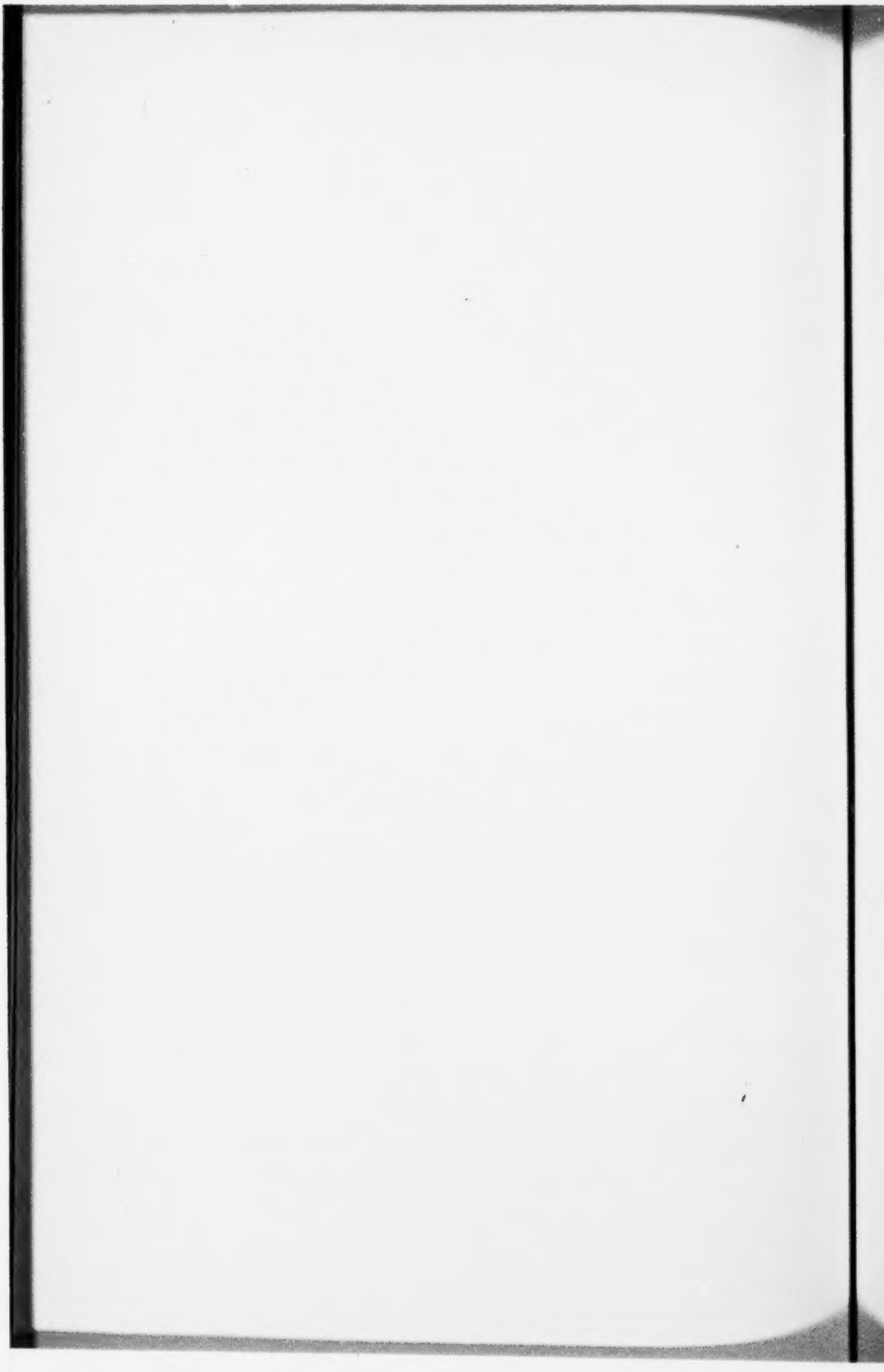
Of Counsel:
BEN F. ROBERTS,
J. RALPH GOFF.



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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

To the Honorable, the Justices of the Supreme Court of the United States:

The petition of John Len Lacy, with respect shows:

That on April 29th, 1941, a body acting as a grand jury, but ordered to be summoned and convened during the term of court for which a previous grand jury had been lawfully convened and was still existing filed an indictment charging petitioner with endeavoring to influence and impede a juror in the discharge of his duty as a petit juror in a case set for trial June 15th, 1938; in another count with corruptly influencing, obstructing and impeding the administration of justice in the same case, and in still another count, with conspiring with persons,

some named and others allegedly unknown, to corruptly endeavor to influence and impede petit jurors in the discharge of their duties and to corruptly endeavor to influence and impede the administration of justice in the same case. (R. 2-10).

A plea in abatement and in bar was filed on the ground, that the grand jury was ordered to serve while a legal grand jury was already serving, and the Western District of Louisiana did not contain a city, or borough with a population of 300,000 inhabitants, and that the appointment of the second grand jury violated Judicial Code, Section 284 (United States Code, Title 18, Section 421). (R. 11-12).

Also that the lawfully appointed jury commissioner, Adolph Jacobs, did not act in the placing of names in the jury box but another person did, namely, one Dalton, who was appointed subsequent to the duly appointed commissioner who was still acting on the day and date when the purported second grand jury was called. (R. 11).

That a jury trial was held, after the court overruled the above plea, and after such trial, the jury on November 18, 1941, returned a verdict of guilty as charged. (R. 52).

That defendant thereupon filed a motion in arrest of judgment. (R. 25-26).

Thereafter, defendant filed a motion for a new trial (R. 26-28), and on December 8th, 1941, same was overruled and defendant was thereafter sentenced to serve two years "in an institution of the reformatory type to

be designated by the Attorney General or his authorized representative." (R. 28-29).

Notice of appeal was then presented (R. 29-31), and an appeal filed in the United States Circuit Court of Appeals for the Fifth Circuit on May 4th, 1942. (Title page). Said appeal being accompanied by assignment of errors.

Argument was heard on appeal and judgment affirming the conviction was rendered (R. 59-66) on June 18th, 1942.

Motion for rehearing was filed, and overruled July 22nd, 1942. (R. 74). This petition is prosecuted from final judgment.

STATEMENT.

This petition is founded on the statute of the United States known as Section 284, Judicial Code *(United States Code, Title 28, Section 421)*, which reads as follows:

> "No grand jury shall be summoned to attend any district court unless the judge thereof, in his own discretion or upon a notification by the district attorney that such jury will be needed, orders a venire to issue therefor. If the United States attorney for any district which has a city or borough containing at least three hundred thousand inhabitants shall certify in writing to a district judge of the district that the exigencies of the public service require it, the judge may, in his discretion, also order a venire to issue for a second grand jury. If the United States attorney for the southern district of New York shall certify in writing to the senior district judge of said district that the exigencies of the public service require it, said judge may, in his discretion, also order a venire to issue for a third

grand jury. The district court may in term order a grand jury to be summoned at such time, and to serve such time as it may direct, whenever, in its judgment, it may be proper to do so. A district judge may, upon request of the district attorney or of the grand jury or on his own motion, by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no grand jury shall be permitted to sit in all during more than eighteen months: Provided, That, for good cause shown, the court may, at any time after the end of the term for which the grand jury was originally summoned, excuse any member of the grand jury and summon and impanel another person in his place. Nothing herein shall operate to extend beyond the time permitted by law the imprisonment before indictment found of a person accused of crime or offense, or the time during which a person so accused may be held under recognizance before indictment found. Mar. 3, 1911, c. 231, Section 284, 36 Stat. 1165, as amended Feb. 25, 1931, c. 297, 46 Stat. 1417; Aug. 24, 1937, c. 746, 50 Stat. 748; Apr. 17, 1940, c. 101, 54 Stat. 110."

Also involved, is *T. 28, Section 412, U. S. Code.*

The facts on which the plea in abatement and bar is based are not disputed; they are:

1. The District Court for the Western District of Louisiana was created by United States Code 28, Section 159, which provides statutory terms as follows:

   For the Opelousas Division on the First Monday in January and June. For the Alexandria Division the Fourth Monday in January and June. For the Shreveport Division the Third Monday in February and October. For the Monroe Di-

vision the First Monday in April and October, and for the Lake Charles Division on the Third Monday in May and December.

It is to be noted that although the indictment was filed for the Shreveport Division, it states that it was found at Lake Charles, Louisiana. The Western District of Louisiana has no city or borough with 300,000 inhabitants.

2. By stipulation of counsel the following facts were agreed as correct:

   (a) One Adolph Jacobs was duly appointed jury commissioner by the Judge of the Western District of Louisiana on October, 1924, and subsequently other commissioners were appointed; Dalton having been appointed in April, 1932, while Adolph Jacobs, original appointee, was still serving.

   (b) A grand jury was convened by order of the Court for the entire Western District of Louisiana, at Shreveport, Louisiana, on November 4th, 1940.

   For Lake Charles by similar order, for December 16th, 1940.

   For Shreveport by similar order, for February 24th, 1941.

   For Lake Charles by similar order for April 28, 1941.
   That the Grand Jury previously drawn for Shreveport for February was reconvened by similar order issued May 26, 1941, for June 10th, 1941.

   That in each case the Grand Juries were adjourned subject to call.

   That Dalton placed the names in the jury box on April 16th, 1941.

Your petitioner relies on the agreed stipulation as showing:

> That the regular, lawful and valid grand jury, and the only grand jury that had a right to return indictments on April 29th, 1941, was the Shreveport Grand Jury convened at Shreveport, Louisiana, on February 21st, 1941, as the Grand Jury which convened at Shreveport on November 4th, 1940, expired on the Third Monday in January, 1941, and the Grand Jury convened at Lake Charles on December 16, 1940, was a second grand jury without lawful existence. But even if under any circumstance the Grand Jury was lawful when convened, at Lake Charles, on December 19, 1940, which was the Third Monday in December, the date for the Lake Charles statutory term to begin, this said Grand Jury had been adjourned subject to call and was still in existence on April 29th, 1941, which was a date well within the Lake Charles statutory term beginning the Third Monday in December, 1940, and not ending until the Third Monday in May, 1941.

JURISDICTION.

This case involves questions of criminal and constitutional law in which the jurisdiction of the Court of Appeals is final unless this Court subjects such decision to review.

It is contended that this Court has jurisdiction to review the judgment under Section 347 (a) of Title 28 of the United States Code. See *United States v. Gulf Refining Company, 268 U. S. 542.*

QUESTIONS PRESENTED.

1. Under Judicial Code, Section 284 (United States Code, Title 28, Section 421) can a District Court

have two grand juries functioning simultaneously in a Federal District where there is no city or borough containing three hundred thousand inhabitants?

2. Will an indictment found by such second grand jury have any legal force and validity?
3. In any event will an indictment found by a second grand jury convened in a Division of the Court, wherein a first grand jury has been convened and is still subject to call and not discharged, be valid, and subject a defendant to trial and authorize conviction?
4. Can a court appoint more than one jury commissioner for a judicial District?

REASONS RELIED ON FOR GRANTING WRIT.

1. There is here involved an important and fundamental question of Federal law which has never been directly passed on by the Supreme Court of the United States, and should be settled by it.
2. The decision herein is in conflict with applicable decisions of the Supreme Court which bear upon matters herein involved, and especially *Botany Worsted Mills v. United States, 278 U. S. 282, 289:*

> "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode;" and

D. Ginsberg & Sons v. Popkin, 283 U. S. 204, 208:

> "General language of a statutory provision although broad enough to include it will not be held to apply to matters specifically dealt with in another part of the same enactment;" and

Escoe v. Zerbst, 295 U. S. 490, 494:

> "Statutes are not directory, when to put them in that category would result in the serious

impairment of the public or private interests that they were intended to protect."

3. The decision herein is in conflict with *United States v. Gale, 109 U. S. 65*, and *United States v. Lewis, 192 Fed. 633, 638*, holding that a Grand Jury must be selected by officers invested with the power, and disregard of this is a matter of substance.

Petitioner herewith presents, as part of this petition, transcript of record in the Circuit Court of Appeals for the Fifth Circuit.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and send to this court for its review and determination, on a day certain to be therein named, the full and complete transcript of the record and all proceedings in the cause numbered and entitled on its docket No. 10,167, T. L. Morris and John Len Lacy, Appellants, v. United States of America, Appellee, and that said judgment of the United States Circuit Court of Appeals for the Fifth Circuit may be reversed by this Court and that your petitioner be discharged without day and have such other and further relief in the premises as this Honorable Court may deem just and proper.

FRANK J. LOONEY,
Attorney for Petitioner.

Of Counsel:
BEN F. ROBERTS,
J. RALPH GOFF.